IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.389 OF 2005

Champaklal Kantilal Doshi. ... Appellant.

Versus.

Nayan Prakash Sarjuprasad Singh
and others. ... Respondents.

Shri Uday P.Warunjikar for the Appellant.

Shri G.S.Godbole for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 3rd May, 2005.

P.C.:

1. Heard Shri Warunjikar for the Appellant and Shri Godbole for the Respondent No.1. The original Plaintiff has taken exception to the impugned Judgment and Order by which the application for temporary of injunction at Exh.5 has been rejected.

2. After hearing Shri Warunjikar appearing for the Appellant and Shri Godbole appearing for Respondent No.1, I find that the learned trial Judge was justified in refusing to grant discretionary relief of temporary injunction.

3. The agreement on which the suit is based is allegedly executed by the Respondent No.2 who claims to be the Power of Attorney Holder of the Respondent No.1. The Respondent No.1 was likely to be allotted certain

plots by the City and Industrial Development Corporation and it was alleged that by the suit agreement, the said plots were agreed to be transferred to the Appellant. A perusal of the Power of Attorney executed by the Respondent No.1 in favour of the Respondent No.2 shows that, prima-facie, the right to execute such an agreement was not conferred upon the Respondent No.2.

4. When the suit was filed, the actual allotment of the plot was not made in favour of the Respondent No.1. Shri Warunjikar states that after institution of the suit, allotment of the plot has been made in favour of Respondent No.1. He has referred to the letter of allotment issued by the CIDCO in favour of the Respondent No.1 which is placed in the additional compilation of documents.

5. If the authority of the Respondent No.2 to execute the agreement on behalf of the Respondent No.1 is doubtful, no fault can be found with the order of the learned trial Judge when he declined to grant the discretionary and equitable relief of temporary injunction. Even according to the case of the Appellant he has paid only a sum of Rs.20,000/- to the Respondent No.2.

6. If the plot has been allotted to the Respondent No.1 during the pendency of the suit as contended by the

Appellant, it is obvious that all further transactions in respect of the plot will be subject to the final outcome of the suit. There is no reason to interfere with the impugned Judgment and Order. Subject to the observation made above, the Appeal is dismissed with no order as to costs.

7. It is obvious that the trial Court will decide the pending suit uninfluenced by the primafacie finding recorded by the learned trial Court as well as the by this Court.

Judge.